



Resource Protection Committee
Monitoring for Forest Fire Prevention Pilot Project Exemption
January 26, 2015

● PROBLEM OVERVIEW

The California State Board of Forestry and Fire Protection (Board) adopted a regulation authorized by Public Resources Code (PRC) § 4584 (j) as amended by Assembly Bill (AB) 744 (2013). AB 744 authorized the Board to modify fuel treatment standards and other requirements of the Forest Fire Prevention Exemption contained in 14 CCR § 1038(i). This Forest Fire Prevention Exemption Pilot Project exempts persons who conduct timber operations from preparing and submitting Timber Harvest Plans, completion reports, and stocking reports when harvesting trees and other commercial forest products for the purpose of reducing the rate of fire spread, fire duration and intensity, fuel ignitability, and ignition of tree crowns.

The primary purpose of the regulation is to assess whether increasing the diameter of trees that may be removed pursuant to the existing Forest Fire Prevention Exemption will reduce the risk of catastrophic fires in the Sierra Nevada Region as defined in the Laird-Leslie Sierra Nevada Conservancy Act [PRC § 33302(f)], and the Counties of Modoc, Siskiyou and Trinity (Pilot Project Region).

PRC 4584(i) (11)

*(F) The department **shall maintain records regarding the use of the exemption** granted in this paragraph in order to evaluate the impact of the exemption on fuel reduction and natural resources in areas where the exemption has been used.*

(G) This paragraph shall become inoperative three years after the effective date of regulations adopted by the board implementing this paragraph.

*(12) After the timber operations are complete, the department **shall conduct an onsite inspection to determine compliance** with this subdivision and whether appropriate enforcement action should be initiated.*

Part of the adopted law, and as part of the deliberation for future consideration, is to provide follow-up review, or monitoring, on the implementation of the regulation during the effective period of the rule. The goal of the monitoring could be to determine such things as the following:

- *Extent of use;*
- *Effectiveness in meeting fuel hazard reduction objectives;*
- *Effectiveness in protection of environmental resources likely effected by the operation;*
- *Cost effectiveness to those who used it;*
- *Level of regulatory compliance and compliance difficulties;*

Since forest practice inspectors are required to inspect the post-harvest condition of each of the sites, the visit should include taking digital photos of before and after representative forest

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conditions and, at minimum, observe and record slash depth. A consistent process is recommended to avoid variation in qualitative evaluations by individual inspectors.

- RELEVANT LEGAL INFORMATION.

Authority: PRC §4551, §4553, and §4584

Reference: PRC §4527, §4554 and §4584.

Consistency:

- RELEVANT FACTUAL INFORMATION.

Although the department is required to provide some analysis of the use and impact of the regulation to inform the Board and the legislature, it does not appear to be the intent of the new law to impose substantial burden on the Department in terms of time and resources. A minimum requirement could be:

1. Require several photo points, as the inspector is obligated to provide an on-site post-harvest inspection. This would take minimal time, and might allow for a comparison with established photo series for fuel models.
2. Random points for the evaluation of fuel depth created by the operation. This could be done as simply as recording random points and measuring with a yard stick. The information obtained thusly could then be forwarded to board staff for further evaluation. Since the Department is already inspecting for compliance, this would also not take much additional time.

This proposal could be executed in the form of a simple memo to the department.

- PROPOSED TEXT OF THE REGULATION.

- ALTERNATIVES.

1. Leave as-is. The minimum necessity is to determine how often the new exemption will be used, and not necessarily how well it is executed.
2. Develop non-regulatory guidelines (internal management practices) to guide the department on evaluation to help provide consistent evaluation.
3. Adopt prescriptive standards in regulation to provide a rigorous science based approach.

Performance Standard v. Prescriptive Standard: "In the case of a regulation that would mandate the use of specific technologies or equipment or prescribe specific actions or procedures, the imposition of performance standards shall be considered as an alternative." (Gov. Code, § 11346.2, subds. (b)(1) & (b)(4)(A))

- PURPOSE AND NECESSITY FOR THE DRAFTED REGULATIONS. **TBD**

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Purpose: The purpose of the proposed regulations should reflect the intent of the statute(s) being implemented, interpreted, or made specific in the rulemaking. How do the proposed regulations address the problem identified by the agency? To find the purpose of a statute, look first to the words of the pertinent statute(s). Sometimes the purpose is set out at the beginning of the chapter or article, or maybe in un-codified statutory provisions. If the purpose is not set out in the language of the statute, purpose may be gleaned from legislative history materials. If you can't identify the purpose from either the words or the legislative history, sometimes the purpose is obvious from what the statute addresses. You may sometimes find the purpose of a statute stated in a court decision.

Benefits: Describe the benefits of the regulation. The purpose of the statute may be to achieve some benefit or goal. (For example, the purposes of the APA are to provide a meaningful opportunity for public participation and to create a record for judicial review.) So, think about and state the benefits and goals of the statute you are planning to implement, interpret, or make specific.

Necessity: An agency must be able to demonstrate why each provision of the regulation is reasonably necessary to effectuate the purposes of the statute(s) or other provisions of law the regulation implements, interprets or makes specific, AND is reasonably necessary to address the problem the agency intends to address. In other words, explain why the agency is addressing the problem and effectuating the purpose of the statute in this particular way.

Documents Relied Upon: Identify each technical, theoretical, empirical study, report, or similar document, if any, the agency is relying upon to support the necessity for the regulation. Sometimes an explanatory statement will itself be adequate. Other times the statement or one or more of its parts will have to be demonstrated by the use of studies, reports, documents or other material relied upon by the agency. The bottom line is that the rulemaking record must contain substantial evidence to demonstrate that the regulation is reasonably necessary to effectuate the purposes of the statute(s) or other provisions of law the regulation implements, interprets or makes specific, AND address the problem the agency intends to address.

- **FISCAL /ECONOMIC EFFECTS OF THE REGULATION. TBD**

Economic Impact Assessment (EIA): Except for major regulations (discussed above), the agency must prepare an Economic Impact Analysis/Assessment (BIA) that analyzes whether and to what extent the regulation will affect:

- the creation or elimination of jobs within the State of California,
- the creation of new businesses or the elimination of existing businesses within the State of California,
- the expansion of businesses currently doing business within the State of California, and
- the benefits of the regulation to the health and welfare of California residents,

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worker safety, and the state's environment.

This assessment must be based upon adequate information concerning the consequences of the proposed regulation. (See Gov. Code, § 11346.3, subd. (e)). In other words, the BIA must contain sufficient information to explain how the agency reached the stated results.

Cost Impacts On Representative Person or Business: Describe the cost impacts known to the agency that a representative private person or business would incur to comply with the proposed regulation. This is "the amount of reasonable range of direct costs, or a description of the type and extent of direct costs, that a representative private person or business necessarily incurs in reasonable compliance with the proposed action." (Gov. Code, §

Reporting Requirement: Determine whether the proposed regulation establishes a reporting requirement that applies to business. If a reporting requirement created by the regulation does apply to business, your agency must include a finding the NOPA that the requirement "is necessary for the health, safety, or welfare of the people of the state that the regulation apply to businesses."

Warning: If you do not include this finding, the reporting requirement does not apply to business. (Gov. Code, § 11346.3 subd. (d))

Effects on Small Business: Determine whether the selected alternative affects small business using the definition of "small business" in the APA at section Government Code section 11342.610. If you decide the selected alternative does not affect small business, prepare a brief explanation of the reasons for that decision. (1CCR 4)

- **ADDITIONAL CONSIDERATIONS. TBD**

Consistency With Existing State Regulations: The agency must evaluate whether the proposed regulation is inconsistent or incompatible with existing state regulations. (Gov. Code, § 11346.5, subd. (a)(3)(D))

Federal Conformity: Determine whether the proposed regulation differs substantially from an existing comparable federal regulation or statute. If it does, draft a brief description of the significant differences and identify the full citation of the federal regulations or statutes. This information will be used when drafting the NOPA. (Gov. Code, § 11346.5, subd. (a)(3)(B))

Identical to Existing Federal Regulation: Determine whether the proposed regulation is identical to previously adopted /amended federal regulation. If so, then include a statement to that effect in the NOPA along with a citation to where an explanation of the provisions of the regulation can be found. If applicable, this is sufficient to satisfy the ISOR and FSOR requirements. (Gov. Code §§ 11346.2, subd. (c) and 11346.9, subd. (c))

Efforts to Avoid Duplication or Conflict with Federal Regulations: This evaluation applies only to a department, board, or commission within the Environmental Protection Agency, the Natural Resources Agency, or the Office of the State Fire Marshal. Draft a description of your efforts to avoid unnecessary duplication or conflict with federal regulations addressing the same issues. You may adopt differing regulations "upon a finding of one or more of the following

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justifications:

a) The differing state regulations are authorized by law; or b) The cost of differing state regulations is justified by the benefit to human health, public safety, public welfare, or the environment. This evaluation must be made available to the public. (Gov. Code, § 11346.2, subd. (b)(6))